

International Regulatory Update

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OTC derivatives and market infrastructures: EU Council publishes revised text

The EU Council has published a revised version of the [regulation](#) on OTC derivatives and market infrastructures, in advance of the final text being published in the Official Journal.

The European Parliament's plenary session approved the regulation on 29 March 2012. The final text is expected to be signed and made available before August 2012.

The regulation will enter into force 20 days after its publication in the Official Journal.

[Covering Note](#)

Banking union: European Commission issues updated memorandum

The European Commission has published an updated version of its [memorandum](#) on the banking union. The updated memorandum indicates that the Commission is ready to issue proposals in Autumn 2012 to introduce more integrated and direct banking supervision at EU level, common deposit guarantee and resolution funds, based on the political orientation of the European Council.

Market abuse regulation: Danish EU Council Presidency publishes progress report

The Danish EU Council Presidency has published a [progress report](#) on the proposed regulation on insider dealing and market manipulation, which updates the existing framework provided by the Market Abuse Directive.

MiFID review: Danish EU Council Presidency publishes compromise texts and progress report

The Danish EU Council Presidency has published a [progress report](#) and new compromise texts for the proposals for a directive on markets in financial instruments repealing Directive 2004/39/EC (MiFID 2) and a regulation on markets in financial instruments and amending the regulation on OTC derivatives, central counterparties and trade repositories (MiFIR).

[Proposed directive – Presidency compromise](#)
[Proposed regulation – Presidency compromise](#)

Prospectus Directive: ESMA consults on technical advice to European Commission on possible delegated acts

ESMA has published a [consultation paper](#) seeking comments on the third part of the technical advice that it proposes to submit to the European Commission on a number of possible delegated acts concerning the Prospectus Directive as amended by Directive 2010/73/EU.

Comments are due by 20 August 2012. ESMA expects to publish a final report and submit its technical advice to the Commission in the fourth quarter of 2012.

OTC derivatives and market infrastructures: EBA consults on draft regulatory technical standards on capital requirements for CCPs

The EBA has published a [consultation paper](#) on draft regulatory technical standards on the capital requirements for central counterparties (CCPs) under the regulation on OTC derivative transactions, central counterparties and trade repositories.

The draft regulatory technical standards proposed for consultation require a CCP to hold capital, including retained earnings and reserves, that is at all times at least equal to the sum of: (1) its operational expenses during an appropriate time span for winding-down or restructuring its activities; (2) its capital requirements for the overall operational risk; and (3) its capital requirements for credit, counterparty credit and market risks stemming from non-covered activities it carries out.

Comments are due by 31 July 2012. The final draft regulatory technical standards will be submitted to the European Commission for endorsement by 30 September 2012.

[Consultation page](#)

Wolfsberg Group revises anti-money laundering principles for private banking

The Wolfsberg Group has revised its [Anti-Money Laundering Principles for Private Banking](#), together with the related [FAQs on Beneficial Ownership](#) and [FAQs on Intermediaries/Authorised Signers](#). While the general thrust of the principles remains the same, they have been clarified and updated to outline practices that had not been referenced before. The concepts related to beneficial ownership have also been further delineated. In addition, a new appendix has been added to the principles that sets

out items that should be required from a due diligence standpoint.

G20 Los Cabos Summit: Leaders endorse strengthened role of Financial Stability Board

The G20 has issued an update on progress achieved at its Los Cabos Summit. Amongst other things, the G20 leaders endorsed recommendations to put the Financial Stability Board (FSB) on an enduring organisational footing, with legal personality and greater financial autonomy. They also endorsed the FSB's amended Charter, which strengthens the FSB's role in coordinating international standard setting and in monitoring implementation of agreed policies and international standards at the national level. Leaders called for full implementation of the recommendations by the next G20 Summit in September 2013.

The G20 leaders committed to implement financial reform to agreed timelines and expressed support for the ongoing policy work of the FSB and its members:

- to strengthen national resolution regimes and recovery and resolution planning for global systemically important financial institutions (global SIFIs);
- to strengthen the oversight and regulation of the shadow banking system;
- to extend the framework for SIFIs to domestic systemically important banks, and to global systemically important insurers and other non-bank financial entities;
- to implement OTC derivatives reforms;
- to implement the FSB Principles and Standards for Sound Compensation Practices;
- to identify potential unintended consequences of agreed financial regulatory reforms for emerging market and developing economies – leaders encouraged continued monitoring, analysis and reporting on the subject;
- to end mechanical reliance on credit rating agency ratings – leaders called for accelerated progress by national authorities in this respect; and
- to improve adherence to supervisory and regulatory cooperation and information exchange standards.

The leaders also endorsed the FSB recommendations regarding the development of a global legal entity identifier (LEI) for parties to financial transactions, with a global governance framework representing the public interest.

Finally, the leaders expressed their support for the actions of the euro area in moving forward with the completion of

the economic and monetary union, in particular the intention to consider concrete steps towards a more integrated financial architecture, encompassing banking supervision, resolution and recapitalisation, and deposit insurance.

[G20 Leaders Declaration](#)

[FSB Chairman's letter to G20 leaders](#)

[FSB report on strengthening FSB capacity, resources and governance](#)

[FSB progress report on implementation of G20 recommendations for strengthening financial stability](#)

[FSB status report on implementation of G20](#)

[recommendations on financial regulatory reform](#)

[FSB report on effects of regulatory reforms on emerging market and developing economies](#)

[National/regional responses on progress in the implementation of the G20 recommendations](#)

[Joint statement by President Van Rompuy and President Barroso](#)

IOSCO reports on credit default swap market

IOSCO has published a [report](#) on the credit default swap (CDS) market, which discusses recent changes and current trends in the CDS markets and provides information from recent literature about the trading, pricing and clearing of CDS. The report covers: (1) the basic functioning of CDS contracts and market size; (2) features of the CDS market, including contract standards, market structure, counterparty risk and collateralisation, CDS prices and bond spreads, CDS role under Basel III; and (3) the impact of CDS on the bond market, including CDS impact on credit spreads and creditor incentives, CDS impact on the secondary market of underlying bonds, and CDS role in the price discovery process.

FRC to consult on executive remuneration

The Financial Reporting Council (FRC) has [announced](#) that it will consult on whether to amend the UK Corporate Governance Code to address a number of issues relating to executive remuneration. The FRC will consult on two proposals that the government has asked it to consider: (1) to extend the Code's existing provisions on claw-back arrangements, and (2) to limit the practice of executive directors sitting on the remuneration committees of other companies.

It will also seek views on whether companies should engage with shareholders and report to the market in the event that they fail to obtain at least a substantial majority in support of a resolution on remuneration.

The consultation will be carried out after the government's legislation on voting and reporting on executive remuneration has been finalised.

UK government announces reforms of directors' pay

The Business Secretary, Vince Cable, has announced a set of reforms to the framework for directors' remuneration. The proposed measures include a binding vote on pay policy, requiring the support of a majority of shareholders voting to pass. The policy should clearly set out how pay supports the strategic objectives of the company and include better information on how directors' pay compares to the wider workforce.

In addition, the Financial Reporting Council (FRC) will consult on updating the Corporate Governance Code so that companies should make a statement when a significant minority of shareholders vote against a pay resolution. Companies will have to report a single figure for the total pay directors received for the year. This figure will cover all rewards received by directors, including bonuses and long term incentives. Companies will also have to report details of whether they met performance measures and a comparison between company performance and Chief Executives' pay.

To introduce these reforms, the government will shortly bring forward amendments to the Enterprise and Regulatory Reform Bill, which is currently before Parliament. The government intends all these reforms to be enacted by October 2013.

[Directors' pay: guide to government reforms](#)
[Vince Cable statement](#)

UK Prospectus Regulations 2012 published

The [Prospectus Regulations 2012](#) have been published. The regulations amend provisions of the Financial Services and Markets Act 2000 in order to implement part of the Prospectus Directive as amended by Directive 2010/73/EU.

Amongst other things, the regulations:

- make amendments to exemptions to the obligation to produce a prospectus;
- substitute a definition of qualified investor based on concepts derived from MiFID;
- amend the purpose of prospectus summaries and the obligation to notify competent authorities of final terms of an offer of securities, and make these available to investors;
- amend the last date before which a supplementary prospectus must be prepared if a significant new factor, material mistake or inaccuracy arises, and the last date on which an investor may exercise their right to withdraw their acceptance of an offer in this situation; and
- extend the scope of section 90 of the Act to provide that the omission of key information from a summary may also attract civil liability.

The regulations will enter into force on 1 July 2012.

AIFM Directive: AMF consults on transposition

The Autorité des marchés financiers/Financial Markets Authority (AMF) has launched a consultation on the draft [report](#) drawn up by the Comité de Place on the transposition of the AIFMD. The report calls for a close transposition of the Directive and puts forward 25 recommendations on the implementation of the AIFMD.

According to the Comité de Place, the following objectives should be pursued when implementing the Directive: (1) intensifying efforts to promote Paris as an attractive location for the alternative investment fund industry; (2) modernising and simplifying the range of French fund vehicles by creating three categories distinguishing between retail (UCITS compliant or not) and professional investor funds, harmonising minimum subscription amounts, and improving AIF eligibility for institutional investors.

Comments are due by 6 July 2012.

The AIFM Directive, adopted by the European Parliament in November 2010, has to be implemented in French law by 22 July 2013. According to the AMF, two thirds of the French management companies and, thus, about half of all existing funds in France, will be covered by the Directive.

German federal government publishes draft Act on prevention of double taxation when raising bank levy

The German federal government has published a [draft Act](#) on the convention of 7 December 2011 between the Federal Republic of Germany and the United Kingdom on the prevention of double taxation when raising the bank levy. The competent authorities in the United Kingdom and in Germany raise separate bank levies – the bank levy and the contribution to the restructuring fund respectively. In order to prevent the double taxation of credit institutions whose branches and subsidiaries provide services in both countries, the UK and Germany entered into a convention on 7 December 2011 in which the parties agreed on a reciprocal crediting of the raised levies.

The draft Act implements the provisions of this convention into German law and will now enter into discussions in the German Parliament (Bundestag).

Hong Kong Securities and Futures (Short Position Reporting) Rules enter into effect

The Securities and Futures Commission (SFC) has announced that with effect from 18 June 2012, market participants are required to report short positions to the Securities and Futures Commission (SFC) under the Securities and Futures (Short Position Reporting) Rules. Those who have reportable short positions as at 22 June 2012 must report to the SFC by 26 June 2012.

[Press release](#)

CSRC consults on rules on issues relevant to implementing regulation on administration of domestic securities investment by QFII

The China Securities Regulatory Commission (CSRC) has published a [consultation draft](#) on the 'Rules on Issues Relevant to Implementing the Regulation on the Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors (QFIIs)' to solicit comments from the public. The consultation draft is intended to promote the development of the QFII program and further open up the domestic securities market.

Comments are due by 5 July 2012.

DFSA consults on proposed enhancements to its rulebook to meet international best practice standards

The Dubai Financial Services Authority (DFSA) has published [Consultation Paper](#) No. 84 regarding proposed enhancements to the DFSA rulebook to meet international best practice standards. In anticipation of a proposed IMF Financial Sector Assessment Programme for the UAE later in 2012, the DFSA is proposing miscellaneous rule changes to bring its regulatory regime in line with Basel, IAIS and IOSCO principles.

Comments are due by 15 July 2012.

OCC issues interim final lending limit rule

The Office of the Comptroller of the Currency (OCC) has approved an [interim final rule](#) modifying its lending limit rule. The rule will be directed at certain credit exposures arising from derivative transactions and securities financing transactions.

Beginning on 21 July 2012, section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amends

the statutory definition of loans and extensions of credit which will allow the lending limit to include certain credit exposures arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. The interim final rule adopted by the OCC will implement the statutory change which applies to both national banks and savings associations. State banks are subject to separate restrictions under section 611 of the Dodd-Frank Act.

Comments are due by 6 August 2012.

RECENT CLIFFORD CHANCE BRIEFINGS

The Italian new 'Growth Decree'

Clifford Chance has prepared three briefings which discuss different aspects of the Italian new 'Growth Decree':

New set of tax measures included in the 'Growth Decree' to address the economic growth of Italian enterprises
http://www.cliffordchance.com/publicationviews/publications/2012/06/new_set_of_tax_measuresincludedinthegrowth.htm!

Another set of new opportunities for Project Bonds in Italy (Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.)

The 'Growth Decree' opens capital markets for non-listed companies
http://www.cliffordchance.com/publicationviews/publications/2012/06/the_growth_decreeopenscapitalmarketsfo.html.

Antitrust litigation in China – an increasing tide?

The Supreme People's Court (SPC) published its long-awaited Provisions on Several Issues Regarding the Application of Laws to Civil Disputes Involving Monopolistic Acts (Antitrust Litigation Rules) on 3 May 2012. The Antitrust Litigation Rules coincide with a steady increase in private enforcement of the Anti-Monopoly Law (AML) – the most recent cases include the on-going Qihoo 360 v. Tencent abuse of dominance case, and the Ruibang v. Johnson & Johnson resale price maintenance case.

Recent statistics published by the SPC show that since August 2008, when the AML came into force, China's courts have accepted 61 AML-related actions (with a little of over 50 concluded as at end 2011). The majority of these cases have been dismissed by the courts for lack of evidence or have been settled for relatively insignificant

sums of money. The Antitrust Litigation Rules are expected to spur private litigation involving antitrust disputes.

This briefing summarises and discusses the salient provisions of the Antitrust Litigation Rules, and considers how this may impact future cases.

http://www.cliffordchance.com/publicationviews/publications/2012/06/antitrust_litigationinchinaanincreasin.html

MAS Consultation Paper on Proposed Revisions to Regulatory Capital Framework

On 3 April 2012, the Monetary Authority of Singapore (MAS) issued a public consultation paper, 'Proposed Revisions to the Regulatory Capital Framework for Holders of Capital Markets Services Licences', following their review of the current regulatory capital framework contained in the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (SFR). The consultation paper sets out the proposed changes to the existing regulatory capital framework and includes a draft of the proposed regulations to amend the SFR and a new proposed MAS Notice SFA 04 – NXX, which sets out the revised methodology for calculating financial resources and total risk requirement. The MAS invited interested parties to submit comments on the consultation paper by 3 May 2012.

This briefing provides an overview and comparison of both the existing and proposed regulatory capital requirements under the consultation paper affecting a capital markets

services licensee for dealing in securities, trading in futures contracts or leveraged foreign exchange trading.

Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.

MAS responds to OTC derivatives reform feedback and consults on proposed amendments to the SFA

On 13 February 2012, the Monetary Authority of Singapore (MAS) issued its consultation paper on the proposed regulation of OTC derivatives. On the same day, the MAS also issued its consultation paper on transfer of regulatory oversight of commodity derivatives from International Enterprise (IE) to MAS.

On 23 May 2012, the MAS issued the initial response to feedback received on the OTC Derivatives consultation paper. This response only addressed MAS's proposals on the revision of the regulatory framework for clearing facilities and the introduction of a regulatory framework for trade repositories. The MAS will issue a response to feedback on the other proposals at a later date and in phases.

This briefing provides a brief summary of MAS's views as set out in its response to feedback received.

Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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